

REMARKS

Claims 16-40 are currently pending. Claims 1-15 were previously cancelled. Claims 16, 19, 32 and 36 have been amended and support can be found in the specification, for example, in paragraph [0028]. No new matter is added.

102 Rejections

Claims 16-40 are rejected under 35 USC 102(b) as allegedly anticipated by U.S. Patent 5,744,027 to Connell et al. (“Connell”).

With respect to independent method claims 16 and 19, Connell fails to disclose making available at least one dialysing fluid concentrate in at least one receiving unit, and setting the pre-set dialysing fluid flow rate over a pre-set treatment time at a value such that at the end of the dialysis treatment time, the at least one receiving unit is either empty or contains a pre-set residual volume of the at least one dialysing fluid concentrate, wherein the at least one receiving unit contains only said at least one dialysing fluid concentrate.

The Examiner interprets the receiving units as flow equalizer chambers 126, 128 in Connell. However, the equalizer chambers do not contain *only dialyzing fluid concentrate*, rather they contain an already-mixed dialysis fluid. In response to the Examiner’s suggestion, claim 16 has been amended to clarify this limitation. In Figure 1B of Connell, the dialysis fluid concentrate is held in containers 116 and 112, and mixes with water in chambers 44 and 120, which is well before the fluid reaches the equalizer chambers 126, 128.

With respect to the setting the flow rate, the Examiner cites the passage of Connell stating, “[t]o guarantee complete fluid transfer to/from the flow equalizer chambers (Fig. 1B, items 126, 128) two flow sensors...are located within the fluid path to detect the absence of dialysis flow” (col 17, lines 33-37). Although Connell may disclose that the *equalizer chambers* are emptied, there is no disclosure of the *concentrate supply* 116 or 112 being emptied of concentrate.

Thus, Connell does not disclose all the limitations of independent claims 16 and 19, and all claims dependent therefrom. Furthermore, there is no teaching or suggestion in Connell to determine the residual volume of the concentrate held in containers 116 or 112.

With respect to independent apparatus claims 23 and 26, Connell fails to disclose a means for mixing connected to the at least one receiving unit and configured to receive the at least one dialysing fluid concentrate therefrom and a control and calculating unit configured to set a dialysing fluid flow rate Q_{db} during a dialysis treatment such that at the end of the pre-set treatment period T_B , the at least one receiving unit is either empty or contains a pre-set residual volume of the at least one dialysing fluid concentrate.

The Examiner has identified the receiving units as equalizer chambers 126, 128 and the means for mixing as concentrate pump 22, concentrate pump 40, supply pump 42 and incoming water pressure regulator 12 in Connell. Pump 40 delivers concentrate 112, pump 22 delivers concentrate 88, and regulator 12 delivers water. In Fig. 1B pump 118 delivers concentrate 116. The mixing occurs in chambers 44 and 120. Then pump 42 delivers an already-mixed dialysing fluid. Additionally, the equalizing chambers do not receive only *concentrate*, but rather receive an already-mixed solution and thus cannot deliver *concentrate* to the means for mixing. Although Connell discloses a UF/PROP system 516 that controls the dialysis flow rate, there is no disclosure that the system 516 is configured to adjust the flow rate so that the receiving unit is empty or contains a pre-set residual volume of the concentrate at the end of the treatment time. Although Connell may disclose that the equalizer chambers are emptied, there is no disclosure of the concentrate supply 116 or 112 being emptied of concentrate.

With respect to previously added claims 31-34, the Examiner states that “[t]he manner of operating a device...does not differentiate the apparatus for the prior art” (Office Action, page 7). However, claims 31-34 are directed to a method, not an apparatus, as they depend from method claim 16. Thus, the Examiner cannot simply ignore the method steps of these claims.

Thus, Connell does not disclose all the limitations of independent claims 23 and 26, and all claims dependent therefrom.

Conclusion

The Office may charge any additional fees required, or credit any overpayments, to Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter regarding this application.

Respectfully submitted,

KENYON & KENYON LLP

Dated: October 23, 2009

/Jocelyn D. Ram/

Jocelyn D. Ram

Reg. No. 54,898

KENYON & KENYON LLP
1500 K Street, N.W. - Suite 700
Washington, D.C. 20005-1257
Tel: (202) 220-4200
Fax: (202) 220-4201